



## Zheng Xuefeng and Chen Guoqing v. People's Hospital of Jiangsu Province [é' é' aã³ã€•é™^ã' ½é•' è%œ±ÿè' çœ•ä°œ°' äœ»]

**Country:** China

**Region:** Asia

**Year:** 2003

**Court:** Intermediate People's Court of Nanjing City [ä, -ä•žä°œ°' ä... ±ä'œä' ½æ±ÿè' çœ•ä°œ°' äœ»]

**Health Topics:** Health care and health services, Hospitals, Informed consent, Medical malpractice, Sexual and reproductive health

**Human Rights:** Right of access to information

### Facts

The Plaintiffs Zhen Xuefeng and Chen Guoqing were a married couple seeking a fertility treatment. They signed a contract regarding such assisted reproduction with defendant People's hospital of Jiangsu Province (People's hospital). The contract did not specify which of two fertilization techniques (Intra-Cytoplasmic Injection (ICSI) or In Vitro Fertilization (IVF)) would be used, however the plaintiffs were charged for technique and other evidence indicated that the plaintiffs understood they were to receive the ICSI technique. When the People's hospital implemented the artificial insemination, however, it applied the IVF technique instead of ICSI, which result in a failure of insemination. The People's hospital did not inform the plaintiffs about this change.

The two plaintiffs brought this suit to the People's Court of Gulou District (People's Court), claiming that defendant breached the contract, and violated China's consumer protection laws. They requested that defendant compensate the plaintiffs for their medical bills of RMB 25,000, cost of lost labor of RMB1392.5, and mental injury of RMB 10,000, and apologize publicly.

The People's Court of Gulou District (People's Court) held that the defendant breached the contract. People's Court first noted that, although there was a contractual relationship between the plaintiffs and defendants, the Law on Protection of Consumers' Rights and Interest was not applicable as the People's hospital was a non-profit organization and not a commercial operator. The People's Court then emphasized the importance of patient choice and the responsibility of a medical provider to inform patients as to their medical options. The People's Court determined that, although there had been no written agreement as to which technology was to be used, the plaintiffs had made clear their choice of the ICSI technique; thus there was implied agreement that the ICSI technique was to be used.

In determining damages, the People's Court found that the plaintiff's payment of medical service fee, including the physical examination fee, the medical bills, and the cost of drugs, was a recoverable loss. However, the compensation for the cost of labor was unclear and therefore unrecoverable. The People's Court also rejected plaintiffs' claim of mental injury compensation as such damages were unavailable under a claim for breach of contract.

The defendant appealed to the Intermediate Court of Nanjing.

### Decision and Reasoning

The Court confirmed the facts found by the People's Court, namely that it was clear the parties had agreed to the ICSI technique. The Court held that where a party failed to perform its obligations under a contract, it must bear the liabilities for breach of contract. Since the People's hospital altered the fertilization technology used without permission in a non-emergency situation, the Court determined that the People's hospital breached the contract and should compensate the monetary lost of the plaintiffs. Therefore, the Court dismissed the appeal and sustained the judgment of the People's Court.

### Decision Excerpts

1. Hence, it is recognizable that although both plaintiffs and defendant have no written agreement on which

technology to adopt, the plaintiff knows the existence of two different treatment and the fee payment shall be deemed as a choice among the medical treatment and the charging of Peopleâ€™s Court shall be deemed as a confirmation of the choice made by plaintiff, which the court gives the benefit of doubt and judged that there is an agreement between plaintiffs and defendants on adopting ICSI technology to perform assisted reproduction and Peopleâ€™s hospital is obligated to treat plaintiffs with ICSI (Page 2, paragraph 3)

â) æ-ï¼CEè™½ç„¶¶ãŽŸã€•èç«‘á‘Šá•CEæ-1æ²;æœ%ã¹‘é•ççºá@šé††á•-ã½•çš•æš€æœ-èç;èjCEæ²»ç—ï¼CEä½†æé™çæ”¶è¹çš„èjCEä,°á”á½“è©ã,°æ~á¹ãŽŸá‘Šé%œœ©çš„çj®è©ï¼CEá æ-ï¼á•-ã»¥æŽ”á®šï¼CEãŽŸã€•èç«‘á paragraph 9)

2.â€•â€! medical service is highly professional, hospitals are bestowed with high discretion in fulfilling the commitment. But because the hospital and the patients are equal civil subject in the medical service contract and the implementation of medical behavior shall have direct impact upon the body of patients. If the right to the choice of the patients is totally neglected, then it is obviously unfair.â€• (page3, paragraph 2)

.â€•â€!á•^ç”±äºŽáCE»ç—èjCEä,°á...æœ%œé«~áºçš„ä,“ä,šæ€šï¼CEá æ-ï¼CE»é™ççæ”á±¥çºá,-á...æœ%œè¾f é«£è€...çš„,é%œœ©æ•fæ~Žæ~¾æœ%œã±á...-á¹ã€,(page2, paragraph 5)

3. â€œIn the medical service contract, the hospital is duty bound to explain the medical treatment and the patient is entitled to the right of choosing among medical solutions. Before implementing medical solution, the hospital is liable to explain medical solutions to patients or its agents unless in emergency. And the patients are fully entitled to be informed the after-effect of medical treatment do onto themselves and choose among medical solutions.â€• (page3, paragraph 2)

áœ”áCE»ç—æœ•ášjá•^á•CEä,-ï¼CEáCE»é™çè‘Ÿæœ%œá¹áCE»ç—æ-1æj^çš„è-‘æ~Žá¹%œášjï¼CEèèœæ,£è€...äº«„!æ•¥çš„,á•Žæžœï¼CEæœ%œæ•fá¹áCE»ç—æ-1æj^èç;èjCEé%œœ©ã€,(page 2, paragraph 5)

4. Contract Law of Article 107 stipulates â€œIf a party fails to perform its obligations under a contract, or its performance fails to satisfy the terms of the contract, it shall bear the liabilities for breach of contract such as to continue to perform its obligations, to take remedial measures, or to compensate for losses.â€• In this case, the plaintiffâ€™s payment of medical service fee in the medical service contract is a loss and its scope includes the check-up fee and the medical bill the plaintiffs paid to Peopleâ€™s Hospital and the bill plaintiffs paid for the drugs purchased outside the hospital, which the defendants shall pay back. (page 4, paragraph 1)

á•^á•CEæ-1æ³ç-1107æ•jèš„á®šï¼šã€œá½“äº(äººä,€æ-1ä,•á±¥èjCEá•^á•CEä¹%œášjæ^-è€...á±¥èjCEá•^á•CEä¹%œášj•á½“èœfá’áCE...æ(-ãŽŸá‘Šá•^áºœºáCE»é™çæ”á»~çš„,æ£€æŸ¥è¹ã€áCE»è-è¹ã»¥á•ŠãŽŸá‘Šæœ”é™ççæ”áœ-è-á-